UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,126	01/19/2001	Jonathan E. Lowthert	42390P10894	9474

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EXAMINER
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ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
		09/766,126	LOWTHERT ET AL.
Office Action Summary		**Examiner**	**Art Unit**	
		HUY T NGUYEN	2616	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10 February 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-20</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>02/10/2005</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Objections

1.　　Claims 1-20 are objected to because of the following informalities: See

examiner comment below. Appropriate correction is required.

The terms "ad" and "inf " used in the claims should be changed to --

advertisement -- and --information --.

Claim Rejections - 35 USC § 101

2.　　35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3.　　Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter. Claim 1-20 direct to information description .

Since the information that has no functional interrelationship to a medium to control

the medium to access the information, or impart to any software or hardware

structural components to perform certain function that is processed by a computer the,

information themselves do not make them statutory. See MPEP 2100. It is noted that ,

there is no means or circuit , in the body of claims, by which the claimed information

is processed or to provide certain function to control delivery mechanism or process

and access the information.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

5.   Claims 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by

Zigmond et al (US 6,698.020).

Regarding claim 17 , Zigmond discloses a   data delivery mechanism

comprising:

a plurality of segments of a program (column 4, lines 40-52); and

interlaced between the segments of the program, a plurality of info segment

pointers each providing access to an info segment which is external to the data delivery

mechanism and which includes, a content identifier associating the info segment with

the program, (column 11, lines 30-50, column 12, lines 6-68, column 13, line 58, column

15 and 16) and a

plurality of entries, each entry specifying, an interruption point at which play of

the program should be interrupted and a commercial should be played, and one or more

conditions controlling the interruption (column 13, lines 1- 58, column 15, lines 14- 45) .

Regarding claim 18, Zigmond further teaches whether a particular type of

commercial is allowed to be played at the interruption point; and whether the

commercial can be skipped by virtue of a financial payment column 13,lines 40-60,

column 14, lines 47-58).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

7.   Claims 1-3,5-6, 8-11,13-14,16, 19-20 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Zigmond et al (6,698,020) in view of Seet et al (6,725,203).

        Regarding claims 1 and 9, Zigmond   discloses a data delivery mechanism

comprising:

        a content item; and

an info segment including a plurality of ad entries, each ad entry including;

an interruption point specifier indicating a point during play of the content item at which play should be interrupted and an advertisement played instead. wherein at least one ad entry of the info segment further has a maximum interruption length specifier (column 3, lines 35-65, column 13, lines 40- 45,column 15).

Zigmond fails to teaches a maximum interruption length specifier .

Seet teaches an apparatus for displaying advertisement , the advertisement having a maximum length specifier (advertisement display time length)(Fig. 5) .

It would have been obvious to one of ordinary skill in the art to modify Zigmond with Seet by providing the advertisement display time information as a maximum interruption length specifier to each of ad of Zigmond thereby allowing accurately control the access the advertisement .

Regarding claim 2, Zigmond further teaches 2The data delivery mechanism of claim 1 wherein the info segment further includes: a content identifier which associates the info segment with the content item (column 10, lines 66 to column 11, line 12, 30-60, column 15, lines 35-65).

Regarding claim 3, Zigmond as modified with further teaches the data delivery mechanism of claim 1 wherein the maximum interruption length specifier indicating a maximum duration of play of the advertisement, after which play of the content item should be resumed even if the advertisement has not completed since Seet teaches the termination of displaying an advertisement for a specified length and Zigmond teaches the content or segments of a program should be displayed upon a

termination of an advertisement (see Zigmond column 4, lines 36 53 and the

advertisement is displayed for a given period of time) .

Regarding claim 5, Zigmond further teaches at least one of the plurality of ad

entries further includes an ad type specifier which prevents an advertisement from

interrupting the content item if the advertisement meets a predetermined criterion

(column 13,lines 40-60, column 19, lines 10-23).

Regarding claim 6, Zigmond further teaches at least one of the plurality of ad

entries further includes an ad lock specifier which permits an advertisement to be

skipped if a predetermined criterion is met (column 13, lines 40-60, column 14, lines 1-

13).

Regarding claim 10, Zigmond teaches wherein the info segment represented

therein further comprises: a content identifier which associates the info segment

with a predetermined content item (column 10, line 64 to column 11, line 12).

Regarding claim 11 , Zigmond as modified with Seet further teaches wherein

the maximum interruption length specifier indicating a maximum duration of

playing the advertisement, after which play of the content item should be resumed even

if the advertisement has not completed Since Zigmond as modified with and Seet

teach that the segment of advertisement having a specified length for a given period

of time and switching the advertisement to normal program after the length .

Regarding claim 13, Zigmond further teaches the info segment represented

therein further comprises at least one of the plurality of ad entries further having ad type

specifier which prevents an advertisement from interrupting the content item if the

advertisement meets a predetermined criterion (column 18, line 64 to column 11, line

12, lines 30-50, column 13,lines 40-60, column 19, lines 10-23).

Regarding claim 14, Zigmond further teaches the info segment represented

therein further comprises at least one of the plurality of ad entries further having: an ad

lock specifier which permits an advertisement to be skipped if a predetermined criterion

is met (column 11, line 13-50, column 13,lines 40-60, column 19, lines 10-23).

Regarding claim 16, Zigmond further teaches the info segment represented

therein further comprises: a content identifier which associates the info segment

with a predetermined content item. (column 10, line 64 to column 11, line 12, lines 30-

50, column 13,lines 40-60, column 19, lines 10-23).

Regarding claim 19, Zigmond teaches a data delivery mechanism having

represented therein an electronic programming guide comprising:

a plurality of program identifications (column 10, line 66 to column 11 line 12);

and

a plurality of info segments, each info segment including, a program identification

associating the info segment with a predetermined one of the plurality of program

identifications, and a plurality of interruption point specifiers which indicate points at

which, during play of a predetermined program identified by the predetermined one of

the plurality of program identifications, play of the program should be interrupted for play

of an advertisement (column 4, lines 36-53, column 15) wherein at least one of the info

segments further includes a maximum interruption length specitier.

Zigmond fails to teaches a maximum interruption length specifier .

Seet teaches an apparatus for displaying advertisement , the advertisement having a maximum length specifier (advertisement display time length)(Fig. 5) .

It would have been obvious to one of ordinary skill in the art to modify Zigmond with Seet by providing the advertisement display time information as a maximum interruption length specifier to each of ad of Zigmond thereby allowing accurately control the access the advertisement .

Regarding claim 20, Zigmond further teaches at least one of the info segments represented therein further includes at least one of permitted ad type specifier; a prohibited ad type specifier; and a ad lock specifier ((column 10, line 64 to column 11, line 12, lines 30-50 ,column 13,lines 40-60, column 19, lines 10-23).

8.   Claims 4,7, 8, 12,15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al (6,698,020) in view of Seet et al (6,725,203) as applied to claims 1 above further in view of Rakavy et al (5,913,040) .

Regarding claims 4 , 7,12,15 and 18 , Zigmond fails to teach at least one of the plurality of ad entries further includes a resume indicator enabling a user to override play of the advertisement since Zigmond teaches that the playing of advertisement segment can be set by a software program but fails to specifically teaches using resume indicator for overriding play of the advertisement .

Rakavy teaches an apparatus for a play advertisement and having means for overriding a play of a advertisement by disable displaying an advertisement (column 10 lines 35-41). It would have been obvious to one of ordinary still in the art to modify

Zigmond with Rakavy by using the teaching of Rakavy for generating a resume

indicator for overriding the play of the advertisement thereby enabling the user

controls the play of advertisements .

Further for claims 4,7,12 and 15, Zigmond teaches at least one of the plurality of

ad entries further includes an ad type specifier which prevents an advertisement from

interrupting the content item if the advertisement meets a predetermined criterion

(column 11, lines 30-68, column 13,lines 40-60, column 19, lines 10-23).

Regarding claim 8, Zigmond further teaches the info segment further includes: a

content identifier which associates the info segment with the content item (column 10,

line 64 to column 11, line 12, column 13,lines 40-60, column 19, lines 10-23).

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to HUY T. NGUYEN whose telephone number is (571)

272-7378. The examiner can normally be reached on 8:30AM -6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, James Groody can be reached on (571) 272-7950. The fax phone number

for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H.N

HUY NGUYEN
PRIMARY EXAMINER